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SIMMS/md

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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Casino Data Systems

Serial No. 74/621,412

Bernhard Kreten for Casino Data Systems.

Frances G. Smith, Trademark Examining Attorney, Law Office 103 (Michael Szoke, Managing Attorney)

Before Simms, Hanak and Walters, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Casino Data Systems (applicant), a Nevada corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the mark DATAPORT for computer hardware for use in a gaming environment, namely, a microcontroller for monitoring a bank of slot machines in

a casino.[1] The Examining Attorney has refused registration under Section 2(d) of the Act, 15 USPQ §1052(d), and under Section 2(e)(1) of the Act, 15 USC §1052(e)(1). Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.

According to brochures which applicant has made of record concerning its high-technology casino equipment, the mark DATAPORT is used in connection with applicant's "unit bank controllers."

> These devices are microcontroller units designed to collect, validate, and store data from the individual slot machines. DataPort™ Unit bank controllers communicate directly with both the Sentinel™ II units and the Polling computer.
>
> ●Each DataPort™ Unit can communicate with up to 31 Sentinel™ II units.
>
> ●Memory in the DataPort™ Unit bank controllers is capacitor backed up for at least one week. Also, all of the DataPort™ Unit data is stored on the Polling computer and on the File Server.

The Mere Descriptiveness Refusal

The Examining Attorney argues that applicant's mark is merely descriptive because it immediately describes a function, purpose or use of applicant's goods:

[1] Application Serial No. 74/621,412, filed January 17, 1995,

> A key element of every microcontroller is the input/output ports which it contains for transporting data, commonly known as data ports… The purpose of the applicant's microcontroller is to transport data from point A to point B, i.e., from a bank of slot machines in a casino to "Sentinel II units" and to the "Polling computer" at remote locations. This function of the goods is described by the mark. The mark immediately conveys the information that the applicant's microcontrollers transport data via data ports…
>
> The applicant's system is mapped in the Oasis Configuration chart that accompanied that specimens submitted in this case… Looking at the chart, the nature of the data port units as mere conduits is shown… Data flows from the slot machines through the data ports to the network controllers. The means by which this information flows is RS-485 lines, and the printed circuit board that controls this flow of information is identified by the applicant as a Sentinel or Sentinel II… The data ports simply collect, validate, and pass the data along, storing the data as a temporary back-up for one week. Thus, the wording "dataport" merely describes the function, purpose, or use of the microcontroller unit and does not function as a trademark to identify source of origin in applicant…
>
> The proposed mark immediately conveys the information that there are input/output devices, i.e. data ports, forming a significant feature of the goods themselves. A significant feature of applicant's microcontroller is its data ports, for that is how the

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claiming use in commerce since July 1, 1991.

> information gets conveyed from the slot machines to the other units. The wording "data port" or "dataport" is used in the industry to mean the ports themselves…

In support of this refusal, the Examining Attorney submitted dictionary evidence showing that a "port" is defined as a "location for passing data in and out of a computing device." The Examining Attorney also submitted copies of articles from the Nexis database in an attempt to show that "data port" and "dataport" is a term of art in the computer industry that refers to input/output ports, that microcontrollers have "data ports," and that a primary function of microcontrollers is to interface with other computing devices through "data ports."

Applicant, on the other hand, argues that its mark is, at best, suggestive of a characteristic of its goods. It is applicant's position that a microcontroller is not defined as a port for data but rather is a product that contains many of the functions found in any computing system.

> While microcontrollers contain small i/o [input/output] ports so that they may, *inter alia*, communicate with other devices, microcontrollers are computer systems with many other features and components. A microcontroller cannot merely be defined as a port. Data does not define a microcontroller… These two

> terms, when combined, do not define a microcontroller unit…
>
> …Some thought process is necessary in order to arrive at the conclusion that Appellant's microcontroller can include ports to transfer data… The fact that the microcontroller includes a means to transfer the data is irrelevant to the purchaser…
>
> …The combination of these two words as a unitary mark results in an arbitrary mark. That is, purchasers of the goods are not buying input/output ports for the transmission of data; in contradistinction, they are buying a microcontroller to track productivity and monitor a bank of slot machines…
>
> Because the goods sold under the mark "DataPort" are microcontrollers, it is respectively submitted that, at best, the phrase "DataPort" may be suggestive only of a characteristic of the product.

Upon careful examination of the evidence of record and the arguments of the attorneys, we do not believe that the Examining Attorney has demonstrated that DATAPORT is merely descriptive of applicant's microcontrollers. While some of the evidence of record shows that the words "data port" are used in relatively close proximity to the word "microcontroller" (some examples of which are noted below), we do not believe that this is sufficient to show that the asserted mark is merely descriptive of applicant's goods.

> The VP22002 kernel processor implements channel coding and decoding,

equalization and control links to the RF section using an embedded 32-bit ARM6 RISC microcontroller.

VLSI Technology has modified the architecture slightly in the lower-voltage VP22003 kernel processor. The company said it has shaved approximately $2.50 from system costs by integrating the channel coder RAM, previously a separate chip, into the main memory. The total chip-set pin count has been reduced by repackaging the devices in 100-pin and 144-pin thin quad flat packs.

The kernel processor includes approved functional blocks for channel coding, equalization, Gaussian mean-shift-key modulation and timing generation. It also offers an asynchronous data port… Electronic Engineering Times, March 25, 1996

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It also supports the insertion of compressed video and audio “clips” by the host microcontroller. The VES2020 DRAM controller supports up to 1 MB of 16-bit wide, page mode DRAM. This DRAM is used for the storage of parametric data and program input from the host microprocessor, extended channel-rate buffering for audio, video and host data and also furnishes storage for firmware. Additional interfaces in the VES2020 are a high-speed serial data port which directly outputs demultiplexed compressed data, an interface for attaching an external descrambler, and an VC bus interface for command and control. IAC Newsletter Database, October 25, 1995

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> Data moves through four ports: a dedicated output to the print engine, a dedicated scanner input, an 8-bit microcontroller interface and a 32-bit data port. The latter is designed for connection to a direct memory access (DMA) or bus-master controller and serves as the chip's connection to memory.
> Electronic Engineering Times, June 5, 1995
>
> * * * * * *
>
> "In addition to the four general-purpose digital outputs, the MC145173 allows direct interface to Motorola's SP1 data port," Babin said, "supporting 68HC11 and selected 68HC05 8-bit microcontrollers (CMUs)…"
> Edge, May 22, 1995
>
> * * * * * *

The record also contains some references to "microcontroller ports" and "microcontrollers with port expansion." We also note that, while we could find definitions of "data" and "port" ("A place of access to a system or circuit") in computer dictionaries, we could find no entry for "data port" alone. Suffice it to say that we are not persuaded that the asserted mark merely describes a feature, characteristic or function of applicant's microcontrollers. Moreover, with respect to the issue of mere descriptiveness, if we have doubt on this matter, that doubt must be resolved in favor of publication.

The Likelihood of Confusion Refusal

The Examining Attorney has refused registration under Section 2(d) on the basis of Registration No. 1,834,432, issued May 3, 1994, for the mark DATAPORT for modems. It is undisputed that modems are devices that convert digital signals into analog signals and vice versa so that computers can communicate over telephone lines. It is the Examining Attorney's position that modems are controlled by microprocessors and, therefore, rely on microcontrollers to perform timing tasks and for changing modes of operation. The Examining Attorney argues that microcontrollers are enhanced microprocessors that direct the flow of data in computer systems. They contain microprocessors and peripherals. It is the Examining Attorney's position, therefore, that the goods are related.

> Both are computer hardware devices that control the flow of data. Modems "convert data from *digital* signals to *analog* signals and vice versa, so that computers can communicate over telephone lines"… Microcontrollers are small computer systems that use a microprocessor as their CPU (central processing unit), and contain memory and peripherals, such as input/output devices, on a single chip… Microcontrollers control the flow of data. They also control microprocessors… and microprocessors are the CPUs of microcontrollers.
>
> The microcontroller's job is to "collect, validate, and store data from the individual slot machines," and to

communicate the data to “Sentinel II units” and the “Polling computer”… Each microcontroller can communicate with up to 31 Sentinel II units. Thus, the functions of applicant’s microcontroller and registrant’s modems overlap.

…Modems enable a computer to transmit data over telephone lines. “Any external modem can be attached to any computer that has an RS-232 port”… Applicant’s OASIS system of which the DATAPORT unit is a part, uses RS-232 lines for communications. The DATAPORT units themselves have ports marked “AUX,” or auxiliary, which may also use and RS-232 line… Applicant’s specimens show at least 8 cables emanating from the body of the microcontroller that appear to be connected to ports on the back of the device, and the brochure submitted with the specimen appears to show the ports themselves, including the one marked “AUX.”

A modem is functionally related to a microcontroller. Both control the flow of data, enabling communication between computers and other devices. Because the microcontroller contains the microprocessor, which is considered the “heart” of the computer, when a computer sends signals, it does so in digital mode, and the modem is required to convert those signals into analog mode so that the signals can be transmitted to another computer via telephone lines. The modem is hooked up to the computer by means of a port… Therefore, a modem works hand-in-glove with a microcontroller.

Modems are used when signals are transmitted computer-to-computer via telephone lines. As stated in applicant’s literature, the OASIS II

> "is capable of communicating to other vendor's on-line and off-line systems"… Thus, the Oasis hardware communicates not only within the Oasis system, which includes the Sentinel boards, card readers, and microcontrollers having data ports, but also communicates with outside, "off-line" systems. "Select data may be transferred to other computer systems and mainframe systems through batch transfers of ASCII data, serial communication, direct networking, or PC-Support (to an AS/400)." Data that is transported via serial communication is often transported by means of modems… It is not unlikely that applicant's hardware uses modems to communicate to any off-line systems to which it sends data. Thus, prospective purchasers would be likely to encounter applicant's goods used in a functional relationship with registrant's goods, and would expect those goods to emanate from a single source.

The Examining Attorney argues that registrant's modems are not restricted as to any specific channels of trade and could operate in a gaming environment, being sold to casino managers and owners. According to the Examining Attorney, a DATAPORT modem could conceivably be used in conjunction with computer hardware hooked into the DATAPORT microcontroller.

Applicant, on the other hand, argues that purchasers of registrant's modems would not be likely to encounter applicant's goods primarily because casino managers and owners are an "insular, sophisticated group" who use care

before installing applicant's expensive equipment. Applicant also argues that modems, which transform signals from a computer so that they are compatible with a telephone, are far removed from applicant's microcontrollers used in a gaming environment for the purpose of monitoring a bank of slot machines.

> Even if the purchasers of Appellant's microcontrollers were to encounter AT&T's [registrant's] modem…, they would not be confused. This is because casino managers and owners are an insular, sophisticated group who make astute decisions before installing expensive instrumentalities such as Appellant's product. Moreover, Appellant's channels of trade such as trade shows and trade magazines are narrowly tailored to expose its product specifically to this sophisticated group and no one else.

Applicant's brief, 16-17. Applicant argues that registrant's modems are not "intimately related" to applicant's goods.

As both attorneys agree, it is not necessary that the goods of the parties be identical or competitive to support a holding of likelihood of confusion. It has been held that it is sufficient that the respective goods of the parties be related in some manner and/or that the conditions and activities surrounding the marketing of the goods be such that they would be encountered by the same

persons. See, for example, In re International Telephone and Telegraph Corp., 197 USPQ 910 (TTAB 1978). While it is true that applicant's goods, in accordance with the description in its application, are only sold to or used by casinos, there is no restriction of any kind in the cited registration. Accordingly, we must presume that registrant's modems are sold to all potential purchasers for those goods.

While applicant's microcontrollers and registrant's modems may both be termed computer-related devices, we are not persuaded, on this record, that modems are a part of applicant's DATAPORT system and/or that modems would be needed as replacement parts for the system. There is also nothing in this record to show that the same company or companies make both modems and microcontrollers. If there were such evidence, that could help demonstrate that potential purchasers would believe that these goods come from the same source. Therefore, and because there has been no showing that casino owners or managers would purchase modems in connection with any type of slot machine monitoring system, we do not believe that the Examining Attorney has sustained her burden of demonstrating that confusion is likely.

Decision: The refusal of registration on both grounds is reversed.

R. L. Simms

E. W. Hanak

C. E. Walters
Administrative
Trademark Judges,
Trademark Trial and
Appeal Board